

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE APPLICATION OF	:	
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MAJED AMIR AL-ATTABI,	:	
	:	
For an Order Pursuant to 28 U.S.C. § 1782 to	:	21-MC-207 (VSB)
Take Discovery for Use in Foreign Proceedings	:	
Pending in the Republic of Lebanon.	:	
	:	
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REPLY DECLARATION OF CHAKIB CORTBAOUI

CHAKIB CORTBAOUI hereby declares as follows pursuant to 28 U.S.C. § 1746:

1. I am counsel to Bank Audi in the proceedings brought by Petitioner Majed Amir Al-Attabi against Bank Audi in Lebanon. I make this reply declaration solely to correct a mischaracterization of Bank Audi's *force majeure* defense in Petitioner's opposition papers.
2. In my previous declaration, I described the *force majeure* defense that Bank Audi has asserted in the Court of First Instance in Beirut, Lebanon in response to the claims brought against it by Mr. Al-Attabi. There, I noted that:

Bank Audi has not asserted that it lacks sufficient liquidity in U.S. dollars to make an overseas transfer. Instead, it has argued that it is not obligated to carry out this transfer in light of the *force majeure* that led to the unavailability of U.S. dollars banknotes.

Declaration of Chakib Cortbaoui (ECF No. 21) ¶ 5. Notwithstanding this clear statement that Bank Audi has *not* asserted that it lacks the liquidity to make an overseas transfer, Petitioner mischaracterizes Bank Audi's position by asserting that Bank Audi claims it "lacks access to sufficient U.S. dollar currency (or banknotes) to honor Petitioner's transfer instructions," *see* Al-

Aref Declaration (ECF No. 28), or by arguing that the “unavailability” of U.S. dollars for transfer is tantamount to “illiquidity,” *see* Petitioner’s Memorandum of Law (ECF No. 29) at 4.

3. As discussed in paragraph 11 of my previous declaration, Bank Audi has deposited a check amounting to USD 4,732,966.70 with the judge presiding over the attachment proceeding commenced by Mr. Al-Attabi. Bank Audi’s *force majeure* defense submits that the current financial crisis in Lebanon relieves it of the obligation to make an overseas transfer of those funds. Thus, the evidence that Bank Audi will submit in support of that defense has nothing to do with the liquidity of Bank Audi’s assets. Rather, the evidence will consist of the various directives of Banque du Liban (Lebanon’s Central Bank) and the Association of Banks in Lebanon. These measures restrict Bank Audi’s present ability to transfer Mr. Attabi’s funds to any overseas account, but not to another Lebanese account.

4. I should note that my law firm and I have been defending Bank Audi in approximately 125 of cases brought by depositors such as petitioner since the beginning of the financial crisis in Lebanon. Bank Audi has regularly asserted a *force majeure* defense in these cases, but has never asserted that illiquidity barred it from making an overseas transfer of U.S. dollars to a customer. Rather, the defense has been asserted based upon the evidence described in the previous paragraph. In addition, as I noted in paragraph 4 of my previous declaration, Bank Audi has asserted that Lebanese law, including the depositor agreement between Bank Audi and Mr. Al-Attabi, does not require the bank to comply with his request to transfer his funds overseas. To my knowledge, a recent decision of an English court has accepted similar contractual defense.

5. I also note, since it is a matter of public record in Lebanon, that to the best of my knowledge, no court has yet accepted the assertion of *force majeure* as a defense to these

depositor lawsuits, whether asserted by Bank Audi or by another bank, but rather, they have uniformly rejected it. As a result, one must question whether Petitioner has served the subpoenas upon Bank Audi's correspondent banks in order to use the information in the pending Lebanese legal proceedings, or whether he seeks it for other purposes.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 21th day of December, 2021 at Beirut, Lebanon.



Chakib Cortbaoui